



AF/3761

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hyung Byum Kim et al.

Examiner: Webb, Jamisue A.

Serial No.: 09/750,744

Art Unit: 3761

Filed: December 28, 2000

Docket No.: 13,788

For: ABSORBENT ARTICLE WITH FLUID
INTAKE INTENSIFIER

Date: November 18, 2002

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SP
11-27-2

SUPPLEMENTAL APPEAL BRIEF

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Assistant Commissioner for Patents
Washington, D.C. 20231

TECHNOLOGY CENTER R3700

Dear Sir:

This Supplemental Appeal Brief is filed in response to the Official Communication having a mailing date of 11/08/2002 for the above-identified application. A Notice of Appeal was filed August 21, 2002. An Appeal Brief was filed with a Certificate of Mailing dated September 4, 2002.

The Official Communication stated that a single ground of rejection has been applied to two or more claims in the application, and the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims to not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.

It is respectfully submitted that the original Appeal Brief has already provided arguments regarding the claims that did not stand or fall together. Nonetheless, the following remarks are submitted to expedite the present appeal.

Issue 2 pertains to whether claims 23-33, 35 and 37 are unpatentable over U.S.P. 6,326,525 to Hamajima et al. in view of U.S.P. 5,643,240 to Jackson et al., under 35 U.S.C. §103(a).

Hamajima describes an absorbent article 1 having a substantially elongate configuration, comprising a liquid-impermeable leakage-preventive layer 3, and a liquid-retentive absorbent layer 2 disposed above the leakage-preventive layer 3, wherein the absorbent layer 2 comprises a liquid-retentive absorbent member 24 and a liquid-permeable topsheet 23, and is formed by a fixed portion 21 and one pair of left and right free edge portions

22, the fixed portion **21** being fixed to the leakage-preventive layer **3**, the free edge portions **22** being located on opposite left and right sides in the longitudinal direction of the fixed portion **21** and each having a free end **22a**, the absorbent member **24** being present in both of the fixed portion **21** and the pair of left and right free edge portions **22**.

Hamajima, however, does not disclose or suggest an article having a cover which includes a hydroentangled, hydroapertured spun-lace material, in the configurations called for by Appellants' presented claims (e.g. claims 23 and 37). To the extent that Hamajima discloses a topsheet composed of an "apertured nonwoven fabric", the disclosure is clearly insufficient to teach a cover which includes a hydroentangled, hydroapertured spun-lace material, as called for by Appellants' claimed invention. In asserting the position put forth by the Examiner, the Examiner has clearly engaged in impermissible hindsight, and has improperly used Appellants' own disclosure as a template for picking and choosing from a universe of disparate components to synthesize Appellants' claimed invention.

Hamajima also does not disclose or suggest an article which includes a pledget having a Thru-Air Bonded Carded Web material in the configurations called for by Appellants' claimed invention. Neither does Hamajima disclose or suggest an article which includes a Thru-Air Bonded Carded Web material having a basis weight of between about 15 g/m² and about 70 g/m², in the configurations called for Appellants' presented claims (e.g. claims 23 and 37). Additionally, Hamajima does not disclose or suggest an article which includes a pledget having layers of a Thru-Air Bonded Carded Web and an airlaid nonwoven material (e.g. claim 27), or a pledget comprising a composite of the Thru-Air Bonded Carded Web and an airlaid nonwoven material (e.g. claim 28), as called for by particular claims of Appellants. Hamajima also does not teach a structure having a pledget with the dimensions or the wrapping sheet called for by claims 30 and 31, respectively. Neither does Hamajima disclose or suggest an article having a cover wherein the hydroentangled, hydroapertured spun-lace material is rayon fiber (e.g. claim 34), or wherein the hydroentangled, hydroapertured spun-lace material is selected from the group consisting of polyethylene terephthalate polyester, polyethylene, polypropylene and bicomponents thereof (e.g. claim 35), or wherein the hydroentangled, hydroapertured spun-lace material is a homogeneous mixture of about 70% rayon fiber and about 30% polyethylene terephthalate polyester (e.g. claim 36), as called for by particular claims of Appellants. Hamajima also fails to teach a structure which includes a Thru-Air Bonded Carded Web material having a basis weight of between about 15 g/m² and about 70 g/m², and having a

staple fiber that has a denier of between about 3 and about 10, in the configuration called for by Appellants' presented claims (e.g. claim 37).

Recognizing that Hamajima does not teach Appellants' claimed invention, the Examiner's rejection has been based upon a combination of Hamajima with U.S.P. 5,643,240 (Jackson).

Jackson describes a combination apertured film and lofty fibrous nonwoven web separation layer which is particularly well suited for use as, among other things, a body side liner for personal care absorbent articles such as sanitary napkins and the like. When used in such applications, the material of the present invention has excellent liquid penetration rates and resists rewet of the surface of the material.

Jackson, however, fails to cure the deficiencies of Hamajima. A proper combination of Hamajima and Jackson would still fail to disclose or suggest an article having a cover which includes a hydroentangled, hydroapertured spun-lace material, as called for by Appellants' presented claims (e.g. claims 23 and 37). Neither would a proper combination of Hamajima and Jackson disclose or suggest an article which includes a Thru-Air Bonded Carded Web material having a basis weight of between about 15 g/m² and about 70 g/m², in the configurations called for Appellants' presented claims (e.g. claims 23 and 37). Additionally, a proper combination of Hamajima and Jackson would not disclose or suggest an article which includes a pledget having layers of a Thru-Air Bonded Carded Web and an airlaid nonwoven material (e.g. claim 27), or a pledget comprising a composite of the Thru-Air Bonded Carded Web and an airlaid nonwoven material (e.g. claim 28), as called for by particular claims of Appellants. A proper combination of Hamajima and Jackson also does not teach a structure having a pledget with the dimensions or the wrapping sheet called for by claims 30 and 31, respectively. Neither does a proper combination of Hamajima and Jackson disclose or suggest an article having a cover wherein the hydroentangled, hydroapertured spun-lace material is rayon fiber (e.g. claim 34), or wherein the hydroentangled, hydroapertured spun-lace material is selected from the group consisting of polyethylene terephthalate polyester, polyethylene, polypropylene and bicomponents thereof (e.g. 35), or wherein the hydroentangled, hydroapertured spun-lace material is a homogeneous mixture of about 70% rayon fiber and about 30% polyethylene terephthalate polyester (e.g. claim 36), as called for by particular claims of Appellants. A proper combination of Hamajima and Jackson also fails to teach a structure which includes a Thru-Air Bonded Carded Web material having a basis weight of

between about 15 g/m² and about 70 g/m², and having a staple fiber that has a denier of between about 3 and about 10, in the configuration called for by Appellants' presented claims (e.g. claim 37).

As a result, when compared to Appellants' claimed invention, the structures taught by a proper combination of Hamajima and Jackson would remain less able to provide desired combinations of rapid penetration of body fluid into the article, rapid absorption, greater retention of body fluid, less rewet, reduced lateral run-off and leakage, cushioned feel and reduced bulk. It is, therefore, readily apparent that a proper combination of Hamajima and Jackson would not teach Appellants' claimed invention.

Accordingly, it is respectfully submitted that the rejection under 35 U.S.C. §103 should be reversed.

Issue 3 pertains to whether claims 34 and 36 are unpatentable over U.S.P. 6,326,525 to Hamajima et al. in view of U.S.P. 5,769,834 to Reiter et al. (Reiter), under 35 U.S.C. §103(a).

Reiter describes an absorbent article useful for absorbing bodily fluids discharged by the wearer of the article. The absorbent article comprises a fluid pervious topsheet, a fluid impervious backsheet affixed to the topsheet, an absorbent core disposed between the topsheet and the backsheet, and a resilient tubular member disposed between the topsheet and the backsheet for transporting the fluids to a predetermined region of the core. The tubular member has a plurality of fluid inlets and a plurality of fluid outlets, the inlets and outlets providing fluid communication between the interior and exterior of the tubular member. Discharged fluids may be transported from regions adjacent the inlets into the interior of the tubular member, and thereafter through the outlets to the predetermined regions of the core adjacent the outlets, thereby rapidly transporting the fluids to the predetermined region of the core. The inlets are normally open and the outlets are normally closed, however compression of the tubular member causes the inlets to close and the outlets to open, thereby permitting the desired fluid movement. Decompression and compression of the tubular member may be accomplished by the normal bodily movements of the wearer.

Reiter, however, fails to cure the deficiencies of Hamajima. A proper combination of Hamajima and Reiter would still fail to disclose or suggest an article having a cover which includes a hydroentangled, hydroapertured spun-lace material, as called for by Appellants' presented claims (e.g. claims 34 and 36). Additionally, a proper combination of Hamajima and Reiter would not disclose or suggest an article which includes a pledget having a composite of

the Thru-Air Bonded Carded Web and an airlaid nonwoven material, as called for by particular claims of Appellants. Neither does a proper combination of Hamajima and Reiter disclose or suggest an article having a cover wherein the hydroentangled, hydroapertured spun-lace material is rayon fiber (e.g. claim 34), or wherein the hydroentangled, hydroapertured spun-lace material is selected from the group consisting of polyethylene terephthalate polyester, polyethylene, polypropylene and bicomponents thereof, or wherein the hydroentangled, hydroapertured spun-lace material is a homogeneous mixture of about 70% rayon fiber and about 30% polyethylene terephthalate polyester (e.g. claim 36), as called for by particular claims of Appellants. As a result, when compared to Appellants' claimed invention, the structures taught by a proper combination of Hamajima and Reiter would remain less able to provide desired combinations of rapid penetration of body fluid into the article, rapid absorption, greater retention of body fluid, less rewet, reduced lateral run-off and leakage, cushioned feel and reduced bulk. It is, therefore, readily apparent that a proper combination of Hamajima and Reiter would not teach Appellants' claimed invention.

Accordingly, it is respectfully submitted that the rejection under 35 U.S.C. §103 should be reversed.

It is respectfully submitted that none of the cited references, or any proper combination thereof, would disclose or suggest the changes and modifications needed to synthesize the article called for by Applicants' claims. Only by impermissibly using Applicants' own disclosure as a guide for picking and choosing disparate components would a person of ordinary skill be led to the changes and modifications needed to construct the invention called for by Appellants' claims.

It is, therefore, readily apparent that none of Hamajima, Jackson, Reiter or any proper combination thereof would disclose or suggest the invention called for by Appellants' claims. Accordingly, the rejection of the claims as being unpatentable over these references should be reversed.

CONCLUSION

For the reasons set forth in the above remarks and the Appellants' previous Appeal Brief, it is respectfully submitted that the Examiner's rejections should be reversed. It is respectfully submitted that Applicants' claimed invention is neither expressly taught by nor inherent in the cited references. Furthermore, the Examiner has not established a *prima facie* case that the particular configurations of components called for by Applicants' claims would be

suggested by a proper combination of the cited references. To the contrary, it is readily apparent that when each cited reference is considered in its entirety and each reference is taken as a whole, a proper combination of the cited references would not teach Applicants' claimed invention. Only in light of Applicants' present disclosure and the impermissible use of hindsight would a person of ordinary skill be directed to the significant changes and modifications needed to reconfigure the various components to arrive at Applicants' claimed invention. It is, therefore, readily apparent that the cited references do not render unpatentable the invention called for by Applicants' claims.

Accordingly, it is respectfully submitted that claims Claims 23 through 37 are in allowable condition, and that the Examiner's rejections should be reversed.

Respectfully submitted,

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CERTIFICATE OF MAILING

I, Catherine E. Wolf, hereby certify that on November 18, 2002, this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231

By: Catherine E. Wolf
Catherine E. Wolf